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November 22, 2004

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Via Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

Re: *Unbundled Access to Network Elements; Review of the Section 251
Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No.
04-313, CC Docket No. 01-338

Dear Ms. Dortch:

Please find attached two copies, submitted in redacted form, of an *ex parte* of NuVox, Inc. ("NuVox") being filed today in the above-referenced matters for inclusion in the record pursuant to Sections 1.1206(b)(1) and (2) of the Commission's rules. The confidential version of these comments is being submitted via hand delivery under a separate cover pursuant to the Commission's August 20, 2004 order in the above-referenced matter.

Please date stamp the enclosed return copy and return it in the envelope provided. If you have any questions relating to this filing, please contact the undersigned.

Very truly yours,



Michael H. Pryor
Counsel to NuVox, Inc.

Enclosures

No. of Copies rec'd 21
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Federal Communications Commission

November 22, 2004

Page 2

cc: Janice M. Myles, VIA HAND DELIVERY
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November 22, 2004

REDACTED - FOR PUBLIC INSPECTION

Via Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Ex Parte Presentation in *Unbundled Access to Network Elements*;
Review of the Section 251 Unbundling Obligations of Incumbent Local
Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338**

Dear Ms. Dortch:

NuVox files this response to BellSouth Telecommunications, Inc.'s ("BellSouth's") November 8 *Ex Parte* submission concerning intermodal competition from cable companies in the enterprise market.^{1/} NuVox submits evidence herein demonstrating that, contrary to BellSouth's representations, cable operators do not provide any significant competition in the small to medium-sized business market served by NuVox.

NuVox's comments in this proceeding have been focused on impairment without access to DS1 loops and EELs used to provide service predominantly to small and medium-sized business customers. NuVox, like other facilities-based carriers serving this market segment, is providing cost-effective, innovative services over an integrated facility consisting of NuVox's equipment connected to an unbundled DS1 loop. This facility offers customers the ability to obtain voice, data and broadband internet access

^{1/} *Ex Parte* Letter from Jon Banks, Vice President of Executive and Federal Regulatory Affairs for BellSouth D.C., Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-313, CC Docket NO. 01-338 (Nov. 8, 2004) ("Nov. 8 *Ex Parte*").

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over a single, secure and reliable facility. As demonstrated by the evidence already submitted in the record and as further supplemented herein, competition in this market segment is overwhelmingly between wireline competitive carriers and the incumbent. There is virtually no intermodal competition from cable companies, and BellSouth's November 8 *Ex Parte* provides no evidence to the contrary. See Attachment A, Declaration of Al Cannon, ¶¶ 2, 5 ("Cannon Decl.").

Initially, NuVox responds to BellSouth's citation to the Commission's recent *271 Forbearance Order*^{2/} to suggest that the Commission has already found that cable companies are competing for service to business customers. According to BellSouth, the presence of intermodal competition from cable in the business market justified forbearance from section 271 requirements for broadband, and likewise demonstrates that CLECs are not impaired in serving enterprise customers.^{3/} BellSouth patently misrepresents the Commission's finding in the *271 Forbearance Order*. In point of fact, the Commission found that intermodal competition alone was insufficient to justify forbearance and that forbearance was warranted because carriers would still have access to unbundled elements under section 251 to serve the business market.^{4/} Far from providing support for eliminating unbundling of enterprise UNEs due to intermodal competition, the *271 Forbearance Order* affirmed that section 251 UNEs must continue to be made available in the enterprise market.^{5/}

The remainder of BellSouth's argument hinges not on hard evidence of actual intermodal competitive deployment in the enterprise market by cable companies, but rather is based on purported statements by or to analysts (none of which are actually submitted into the record) and general website claims of service offerings. In many cases, BellSouth fails to distinguish between the offerings of cable companies and their CLEC affiliates, such as Time Warner Telecom^{6/} or Cox Communications Inc.,^{7/} who

^{2/} *In the Matters of Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c), Qwest Communications International, Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c), BellSouth Telecommunications, Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c); 271 Forbearance Order*, WC Docket Nos. 01-338, 03-235, 03-260, 04-48, Memorandum Opinion and Order (rel. Oct. 27, 2004) ("*271 Forbearance Order*").

^{3/} Nov. 8 *Ex Parte* at 3.

^{4/} *271 Forbearance Order* at n.68.

^{5/} BellSouth's suggestion that the Commission purported to justify forbearance based on cable competition in the business market is also off the mark because the forbearance granted by the Commission is limited to the mass market.

^{6/} Time Warner Telecom has filed comments in this proceeding advocating for continued UNE access to DS1 loops and other high capacity facilities because such access constrains ILEC prices for special access services. See, e.g., Comments of Time Warner Telecom, WC Docket No. 04-313, CC Docket No. 01-338, at 1-2 (Oct. 4, 2004).

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themselves often rely on ILEC last-mile facilities. To the extent that cable affiliates provide service utilizing traditional wireline technologies, it is difficult to understand in what sense they should be considered *intermodal* competitors. Additionally, BellSouth engages in sleight of hand. In several instances, BellSouth cites the number of *homes* passed by cable companies and in the very next sentence cites company website claims of business service, seeking by association to suggest a high magnitude of potential service.^{8/} There is, however, no logical connection between the two.

The evidence of actual deployment tells a far different story than BellSouth attempts to depict through its collection of analyst quotes and the puffery of website advertising. As noted in the *TRO*, as of June 2002, cable companies had responded on their 477 forms that they provided fewer than 16,000 high speed coaxial connections to medium and large businesses. *TRO* n.128.^{9/} By the end of 2003, the number of high speed coaxial cable connections to medium and large business (*i.e.*, business with four or more lines) was still less than 30,000.^{10/} These numbers indicate that cable penetration into business market remains de minimis.

Strong empirical evidence of the paucity of actual cable competition in the business market is also provided in the record in this proceeding. Integra, for example, commissioned a survey to identify the local exchange carrier serving business customers in that company's five largest MSAs, Seattle, Tacoma, Portland/Vancouver, Salt Lake and Minneapolis/St. Paul. A total of 1,944 small and medium size businesses responded. The businesses all had 96 or fewer business lines at a location and most were much smaller.^{11/} The businesses surveyed identified 17 different service providers, only one of

^{7/} Cox Communications, Inc., describes itself as a facilities-based CLEC and has advocated for the pick and choose rule and recently filed a petition to ensure access to subloop UNEs. See Comments of Cox Communications, Inc., CC Docket Nos. 01-338, 96-98, 98-147, at i, 1-6 (Oct. 16, 2003); *Petition for Declaratory Ruling by Cox Oklahoma Telcom, LLC, In the Matter of Clarification of the Commission's Rules and Policies Regarding Unbundled Access to Incumbent Local Exchange Carriers' Inside Wire Subloop*, CC Docket No. 01-338 (Oct. 27, 2004).

^{8/} See Nov. 8 Ex Parte at 6 (Comcast), 11 (Charter), 12 (MediaCom).

^{9/} For purposes of 477 reporting, medium and large businesses include any business that with four or more lines. The FCC determined the number of coaxial cable connections by calculating the difference between cable-provided high-speed lines to residential and small business customers and the total number of cable provided high-speed lines as reported on Tables 3 and 5, respectively, of the *High Speed Services December 2002 Report*. *TRO* n.128. See also *id.* at n.1349 ("The BOCs' arguments confirm that cable is primarily suited for service to residential customers, rather than to business customers.').

^{10/} The number of coaxial cable connections for December 2003 is calculated in the same manner as the Commission calculated coaxial cable business connections for June 2002 in the *TRO*.

^{11/} The businesses surveyed were generally small businesses. Approximately 75 percent had less than 10 employees at the location and 77 percent had annual revenues of \$2.5 million or

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which was a cable company, Comcast.^{12/} The remainder were wireline CLECs. Comcast's percentage was negligible. It was identified by only 20 out of the 1,944 businesses, for a one percent market share.^{13/} (Of course, in each MSA the local Bell Companies held the majority of customers).^{14/} Additionally, Integra surveyed customers who left Integra for another carrier and not in a single instance did a customer move to a cable company.^{15/}

The evidence submitted by Integra is consistent with NuVox's experience. NuVox submitted a declaration by its Executive Vice President of Marketing and Sales stating that NuVox's business customers rarely identify cable companies as competitors.^{16/} NuVox also submits with this letter the declaration of Al Cannon, Senior Manager of Executive Customer Resolution, reaching conclusions strikingly similar to those submitted by Integra. *See generally* Cannon Decl. In order to provide a more concrete understanding of cable penetration, NuVox submits a report compiled by Mr. Cannon identifying the significant carriers to which its subsidiary NewSouth lost customers (as determined by an analysis of the carriers to which the telephone numbers of customers leaving NewSouth were ported).^{17/} *See* Exhibit A, Cannon Decl., ¶¶ 3-4 and Attachment 1 thereto ("Report"). That churn report (covering the ten-month period from January 2004 to October 2004) demonstrates that, of the **[BEGINNING OF PROPRIETARY INFORMATION] [END OF PROPRIETARY INFORMATION]** lines lost to major competitors during the first ten months of this year, all but 23 lines (which were ported to Time Warner) were clearly lost to wireline carriers. Furthermore, even the remaining 23 lines also may have been lost to a wireline carrier since NuVox's records do not indicate whether they were lost to Time Warner Telecom or Time Warner Cable. Cannon Decl. ¶ 5 and Report. During this period, NewSouth moved lines to the following major competitors: BellSouth, Verizon, US LEC, I-55, AT&T, Network Tel, BTI, Xspedius, XO, MCI, Cbeyond, GulfTel, TelegenceCom, FDN, ITC Delta Com, KMC, Sprint, Madison, River, Time Warner, and NuVox. The report also demonstrates that BellSouth was the primary beneficiary of churn in six of the

less. Comments of Integra Telecom., WC Docket No. 04-313, CC Docket No. 01-338, Appendix C, Affidavit of John Nee ("Nee Aff."), Exh. A. at 3. (Oct. 4, 2004). The mean number of lines ranged from 4.6 per location in the Tacoma MSA to 9.3 in the Seattle MSA. *Id.* at 4.

^{12/} See Nee Aff. ¶¶ 3-4.

^{13/} Nee Aff. ¶ 4.

^{14/} Nee Aff., Exh. A at 5.

^{15/} Nee Aff. ¶5.

^{16/} Comments of NuVox, Inc, WC Docket No. 04-313, CC Docket No. 01-338, Exh. C, Declaration of Christopher Benyo, ¶¶ 2-3. (Oct. 4, 2004).

^{17/} The data relates to NewSouth because it was drawn from information being compiled by NewSouth before and after NewSouth's merger with NuVox Communications and is particularly responsive to BellSouth's claims of cable competition in its region.

Page 5

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ten months covered by the report. This evidence indicates that cable operators simply do not have any significant presence in the small and medium-sized businesses market. Cannon Decl. ¶¶ 5-6 and Report.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael H. Pryor" with a stylized flourish at the end.

Michael H. Pryor
Counsel to Nuvox Communications, Inc.

WDC 357495v1

ATTACHMENT A

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Unbundling Access to Network Elements)	CC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local Exchange)	CC Docket No. 01-338
Carriers)	
)	

DECLARATION OF AL CANNON ON BEHALF OF NUVOX, INC.

1. I am currently Senior Manager of Executive Customer Resolution of NuVox, Inc. ("NuVox"), which provides services through several operating subsidiaries.^{1/} I have been employed by NuVox (or its subsidiary NewSouth) since 1999 in a management role responsible for customer relations and retention. As part of those duties, I have produced over the past two and a half years regular internal reports on customer churn that tracks the lines churned, reasons for churn, and the competitors to which the lines were switched.

2. I am submitting this declaration to demonstrate that the services offered by NuVox and its subsidiaries to small and medium-sized businesses in its markets are not subject to competition from services offered by cable operators.

3. Attached hereto is a chart that I compiled summarizing the number of lines lost by NewSouth to competitors on a monthly basis over the ten-month period from January, 2004, to October 2004, as determined by my analysis of the requests made by NewSouth customers to have their numbers ported to new carriers. The information reflected by the

^{1/} NuVox recently concluded a merger of equals between NewSouth Communications ("NewSouth") and NuVox Communications.

chart was gathered by NewSouth both prior to and following its merger with NuVox Communications as part of an ongoing effort to identify and monitor significant NewSouth competitors.

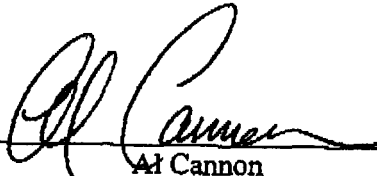
4. The chart's first column ranks significant competitors by the number of lines lost to those competitors during the given month, the second column provides the name of the relevant competitors, the third column indicates the number of lines lost to each competitor, and the fourth column indicates the percentage of the lines lost to each of the listed competitors during each relevant month (totaling 100 percent of the lines lost each month to those competitors).

5. The chart indicates that, of the **[BEGINNING OF PROPRIETARY INFORMATION]** **[END OF PROPRIETARY INFORMATION]** lines lost to significant competitors, all but 23 of those lines were lost to wireline carriers. Furthermore, even the remaining 23, which were ported to Time Warner, may well have been lost to a wireline carrier since NuVox's records do not indicate whether they were lost to Time Warner Telecom or Time Warner Cable. Wireline carriers thus constituted the only significant competition during this period, and BellSouth was the primary beneficiary of churn during six out of ten of the months covered by the report.

6. Finally, I am personally unaware of the loss of any customers to cable operators during the described period.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on
November 22, 2004.


Al Cannon

WDC 357488v1

EXHIBIT 1

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[BEGINNING OF PROPRIETARY INFORMATION]

[END OF PROPRIETARY INFORMATION]

CERTIFICATE OF SERVICE

I, Michelle C. Gardner, hereby certify that on this 22nd day of November 2004, the foregoing Ex Parte of NuVox Communications, was filed with the Federal Communications Commission's Washington D.C. location via hand delivery and copies were sent to the following as indicated:

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Michelle C. Gardner